November 8, 2010

**RE: Comments on EPA's Draft Chesapeake Bay TMDL**

The Environmental Protection Agency (EPA) provided a summary of PA's draft watershed implementation plan (WIP) on September 24, 2010 and comments on September 27, 2010. The actions EPA proposes to implement due to "serious deficiencies" of the WIP were incorporated into a draft TMDL and will impose an economic hardship not only to treatment facilities and their ratepayers but also to industrial direct dischargers within the Chesapeake Bay Watershed. The measures to require limit of technology treatment is at a considerable expense and with little benefit. EPA must explain how High level backstop measures show reasonable assurance that the load reductions from point source and $MS_4$ sectors representing less than 30% of the load could even meet the expectations of the TMDL.

Reviewing Table 9-4, for Pennsylvania only, lists Berwick Municipal Authority, Danville Municipal Authority, Mt. Carmel Municipal Sewage Authority, Dillsburg Borough Authority, Hanover Borough, Lower Allen Township Authority, Shippensburg Borough Authority, Moshannon Valley Joint Sanitary Authority, Little Washington WW Co, KBM Regional Authority, and Gregg Township twice. Why are these facilities listed twice and how does that impact the total loadings requested?

Pennsylvania has taken a point source strategy for municipal wastewater treatment facilities to achieve water quality consistent with a healthy Chesapeake Bay. Significant municipal point sources, which account for a major portion of facilities, have or soon will have NPDES permits with Total Nitrogen annual load limits and Total Phosphorus annual load limits equivalent to 6.0mg/l N and 0.8mg/l P. It is estimated that this action will exceed the nutrient reduction requirement as values are based on design flow and accounts for growth. During the period of current flow to design flow, these facilities will have credits available for trading. Some facilities have opted to purchase credits in lieu of capital upgrades to meet their existing NPDES requirements. Industrial dischargers considered "significant" were given an allocation to account for their pollutant loading.

Municipal sources have already committed $1.4 billion in capital and added $63 million to operation and maintenance costs (Legislative Budget and Finance Committee Report 2008) to meet the approximate 20% reduction from their sector. A backstop provision to require treatment technology to 3.0 N and 0.1 P will net a minimal reduction to the pollutant load. While technology is available to municipal sources the reductions available will not satisfy a bay water quality need. Additional capital expenditures could be further assigned to provide real

The Russell E. Horn Building || 445 West Philadelphia Street || PO Box 15040 || York, PA 17405-7040
T: (717) 852-1400 || F: (717) 852-1401 || E: corpinfo@bh-ba.com
www.bh-ba.com
Pennsylvania I Maryland I Louisiana I West Virginia I New Jersey I Mississippi I Tennessee I Germany

BUCHART HORN, INC.

reductions. The backstop provision also incorporates a numeric value inconsistent with industrial treatment technologies. Not all industrial wastes are equivalent to municipal characteristics. Economic burdens to industrial operations will only lead to assessment of whether operations can be successful in the United States or these manufacturing operations should seek foreign locations to meet budget and employee objectives. EPA needs to explain how industrial facilities with nitrogen levels greater than 100mg/l can achieve 3.0mg/l as a discharge limit.

Pennsylvania Department of Environmental Protection's (PADEP) draft WIP submitted expresses Pennsylvania's 2009 progress for Total Nitrogen as 106,400,000 pounds and Total Phosphorus is listed as 3,960,000 pounds. One of EPA's concerns with the draft WIP was a Total Phosphorus load is 11% above EPA's target. At 3,960,000 pounds, Total Phosphorus is 7% above EPA's "target". There is no acknowledgement on the Total Maximum Daily Load by EPA as to margin of error and the 7% my in fact be within the target load. DEP should be able to add to their phase II and phase III WIP's that loading will be verified and account for adjustments at that time. EPA states Total Nitrogen is within the target load.

Nutrient Trading has been an area where reductions above a baseline can be used in contracts to help other entities meet their reduction requirements. The trading program is based on a model that has been updated and delivery ratios that have changed. PA's trading program must be maintained at the current values and as EPA states the model is constantly changing, should provide a means of dialog during the phase III WIP submission on a final delivery ratio and baseline/threshold values and not a phase I WIP deficiency.

EPA should provide clear scientific data to show why delivery ratios have changed or allow DEP to use existing values. If the model is constantly updated by EPA, a set of standards need to be developed to successfully allow states progress in reductions to be admitted.

EPA considers Pennsylvania's funding initiatives inadequate. Pennsylvania government is in transition but recommendations for additional state funding have and will be pursued and dedicated to the Bay program. EPA needs to recognize the need for more federal financial assistance and portions dedicated to Chesapeake Bay nutrient reductions. A clean water needs survey developed every 4 years has been virtually ignored during budget discussions with the executive and legislated branches of the federal government for the last 16 years.

EPA has reserved 5% of the nutrient allocations for Total Nitrogen and Total Phosphorus in the event of different values in the model 5.3. Will this reserve be returned to states load allocations?

BUCHART HORN,INC.

EPA has had the opportunity to comment on draft NPDES permits showing annual loads, offsets, trading program, and retirement of on lot systems. Why has EPA failed to comment during the draft period and final permits have been issued and now offer that offsets and on lot system retirement are not valid. EPA needs to explain their position.

EPA considers PA's goals for new technologies for non point source reductions to be excessive and unrealistic prior to PA's attempt to implement its program. EPA should provide federal level assistance to secure technical experts in the development of new technologies providing nutrient reductions. As PA has initiated pilot programs in Lancaster and Bradford Counties on local involvement of nutrient reduction possibilities and responsibilities, EPA needs to facilitate efforts in joint programs with other federal agencies such as the Department of Agriculture, Department of Energy, USGS, and Department of Interior to promote innovative technologies capable of significant nutrient reductions. The NRCS branch of the Department of Agriculture can also provide technical service providers to assist in reductions.

EPA has stated there is no reasonable assurance goals will be met. Current loads are based on estimations and model inputs. The model is continually modified and does not account for reductions outside the scope of the model. EPA should allow states an opportunity to adjust responses through the phase III WIP as a final action prior to implementation of backstop measures.

If you have any questions concerning the comments feel free to contact me at 771/852-1409 or jtroutman@bh-ba.com.

Sincerely,
Buchart Horn, Inc.

John S. Troutman
Sr. Operations Specialist